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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/552,844	06/09/2006	Glen Roderick Jacobs	CUL-0016	2595

23413 7590 01/27/2009
CANTOR COLBURN, LLP
20 Church Street
22nd Floor
Hartford, CT 06103

EXAMINER

HAGEDORN, MICHAEL E

ART UNIT	PAPER NUMBER
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3754

NOTIFICATION DATE	DELIVERY MODE
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01/27/2009

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

usptopatentmail@cantorcolburn.com

Office Action Summary	Application No. 10/552,844	Applicant(s) JACOBS ET AL.	
	Examiner Michael Hagedorn	Art Unit 3754	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 June 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 - 19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) 1 - 19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 October 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>12 October 2005</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Drawings

1. New corrected drawings in compliance with 37 CFR 1.121(d) are required in this application because the drawings provided do not allow one of ordinary skill in the art to replicate the invention or to understand how the invention works. Applicant is advised to employ the services of a competent patent draftsman outside the Office, as the U.S. Patent and Trademark Office no longer prepares new drawings. The corrected drawings are required in reply to the Office action to avoid abandonment of the application. The requirement for corrected drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 1 - 19 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Written description along with the drawings are inadequate because it is unclear as to where the openings from the first and second fluid sources are located in the closure/valve structures(s) and what structure of the closure is actually opening and closing the openings. While the prior art setting may be mentioned in general terms, the essential novelty, the essence of the invention, must be described in such details,

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including proportions and techniques, where necessary, as to enable those persons skilled in the art to make and utilize the invention. Specific operative embodiments or examples of the invention must be set forth. Examples and description should be of sufficient scope as to justify the scope of the claims. In light of the above informalities the claims have been examined as could best be understood by the examiner.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

6. Claims 1, 2, 7, 8, 12, 17 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Widgery (US Patent 6,971,551 – Embodiment 7a – 7f) in view of Widgery (US Patent 6,971,551 – Embodiment 10a – 10c).

7. In re claim 1, Widgery (Embodiment 7a - 7f) discloses a container closure (700) engageable with a container (column 15, lines 55—60) having an interior for containing a fluid, the container closure (700) comprising a fluid opening (728) through which fluid can flow, the fluid opening (728) in fluid communication with the interior of the container, the fluid opening (728) associated with sealing means (720) adapted to substantially seal the fluid opening (728) in a first position (fig 7a) and allow fluid to flow in a second position (fig 7b), a reservoir (780) containing a second material, a first dispenser member (724) associated with the reservoir (780) and having at least one dispenser opening (768) therein, and a second dispenser member (722) respectively formed in relation to the first dispenser member (724), the second dispenser member (722) movable between a closed position (fig 7b) wherein the at least one dispenser opening in the first dispenser member (724) is substantially obstructed (fig 7b) so that no second material can flow, and at least one open position wherein the at least one dispenser opening in the first dispenser member (724) is at least partially unobstructed so that the second material can flow (fig 7c).

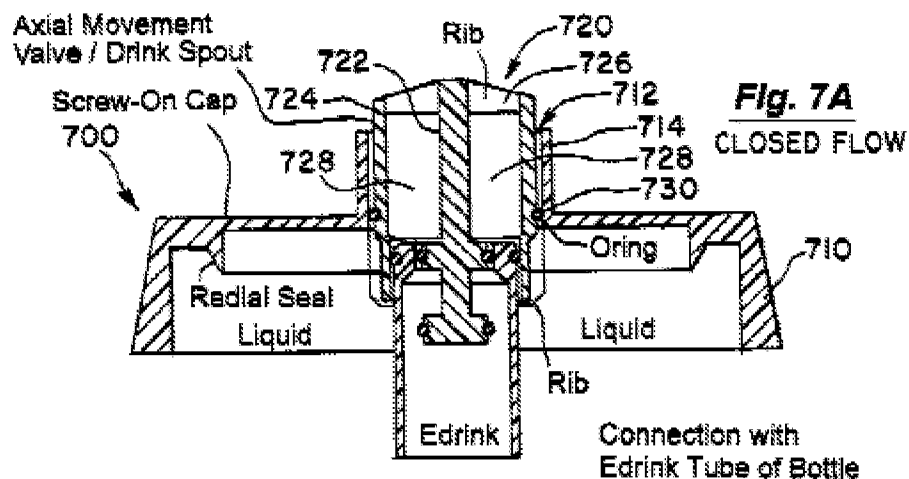


Figure 7a - Widgery (US Patent 6,971,551)

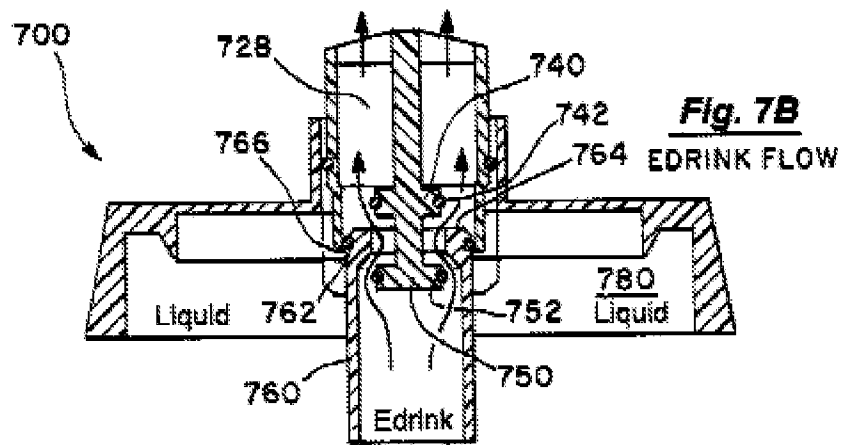


Figure 7b - Widgery (US Patent 6,971,551)

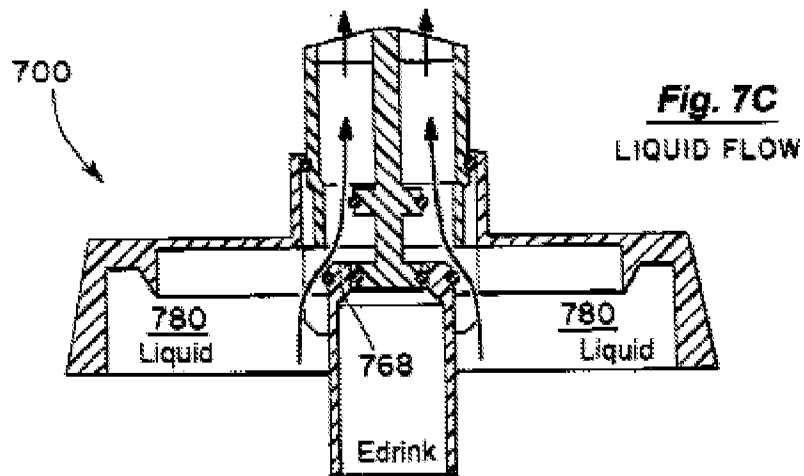


Figure 7c - Widgery (US Patent 6,971,551)

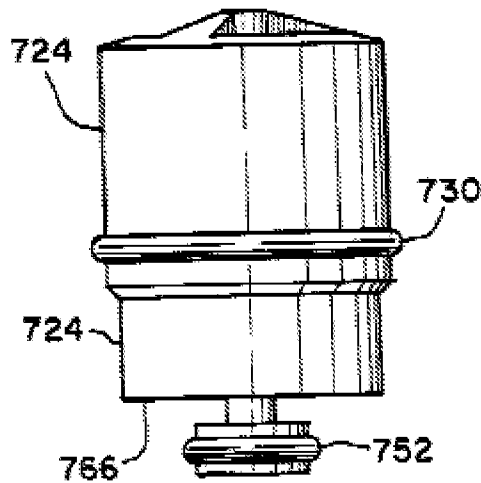


Fig. 7E

Figure 7e - Widgery (US Patent 6,971,551)

8. However, Widgery (Embodiment 7a – 7f) fails to disclose the mixing of the fluid and a second material to mix in a passage, prior to exiting the container closure with the fluid flowing through the fluid opening.
9. Although, Widgery (Embodiment 10a – 10c) does disclose allow the mixing of the fluid and a second material to mix in a passage (Column 17, lines 35), prior to exiting the container closure (1080) with the fluid flowing through the fluid opening (A).
10. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to combine the two embodiments because this would allow the user to fill the containers with fluids that may require mixing directly before use or consumption.

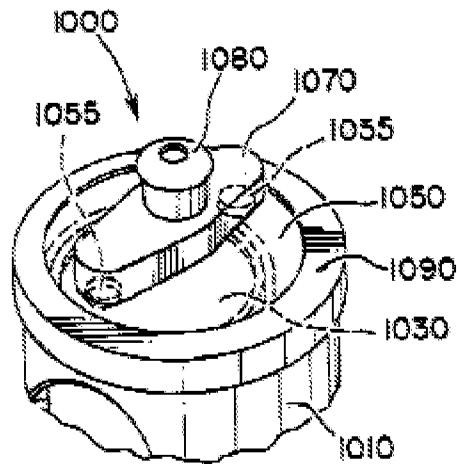


Fig. 10B

Figure 10b - Widgery (US Patent 6,971,551)

11. In re claim 2, Widgery (Embodiment 7a – 7f) discloses the fluid in the container can access the fluid opening (728) without mixing with the second material (fig 7b).

12. In re claim 7, Widgery (Embodiment 7a - 7f) discloses wherein the fluid opening (728) is located at one end of an elongate mouthpiece (724) adapted to allow fluid to flow when the mouthpiece (724) is in the raised position (fig 7c) and prevent fluid from flowing when the mouthpiece (720) is depressed (fig 7a).

13. In re claim 8, Widgery (Embodiment 7a – 7f) discloses wherein the mouthpiece (720) is operable between the raised position (fig 7c) and the depressed position (fig 7a) independently of the operation and the movement of the dispensing portions (722).

14. In re claim 12, Widgery Embodiment 7a – 7f) discloses wherein the second dispenser member (722) is located concentrically and coaxially with the first dispenser member (724).

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15. In re claim 17, Widgery (Embodiment 7a – 7f) wherein the first dispenser member (724) and the second dispenser member (722) are rotatably movable with respect to each other between the at least one open (fig 7b) and the closed position (fig 7c).

16. In re claim 19, Widgery (Embodiment 7a – 7f) wherein the sealing means and the first (724) and second dispenser (722) members are operable independently of one another to allow a user to access the first fluid without accessing the second material or a mixture of the two.

Allowable Subject Matter

17. It appears that claims 3 – 6, 9 – 11, 13 – 16 and 18 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 1st paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US Patents (6,609,612); (5,353,964); (4,893,729); (6,609,634); (6,468,435); (6,616,319); (6,565,743); (5,277,303); (5,405,001); (6,003,728); (6,959,841); (6,766,903) (6,367,622); (6,938,794); (4,749,103). US Patent Publications (2006/0273109); (2007/0102394); (2004/0007594); (2007/0051723); (2008/0093381); (2002/0036212)

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Hagedorn whose telephone number is

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(571)270-5705. The examiner can normally be reached on 7am - 5pm; Mon thru Fri except federal holidays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on (571)270-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/M. H./
Examiner, Art Unit 3754

/Kevin P. Shaver/
Supervisory Patent Examiner, Art Unit 3754